IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES ERIC MOORE, Defendant.	No. CR 04-0114 LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including the defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER ____

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence to help you decide whether to believe these witnesses and how much weight to give their testimony.

INSTRUCTION NUMBER ____

You have heard testimony that the defendant made statements to law enforcement officers. It is for you to decide: (1) whether the defendant made the statements; and (2) if so, how much weight you should give to them.

In making these decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER _____

You have heard a certain category of evidence called "similar acts" evidence. Here, you have heard evidence of the defendant's prior conviction of a drug crime. You may not use this "similar acts" evidence to decide whether the defendant carried out the acts involved in the crime charged in the Indictment. In order to consider "similar acts" evidence at all, you must first unanimously find beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crime charged in the Indictment. If you make that finding, then you may consider the "similar acts" evidence to decide whether the defendant had the knowledge, motive, and intent to commit the crime charged. "Similar acts" evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you shall disregard such evidence.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such acts in this case. You may not convict a person simply because you believe he may have committed a similar act in the past. The defendant is on trial only for the crime charged, and you may consider the evidence of "similar acts" only on the issue of defendant's knowledge, motive, and intent.

INSTRUCTION NUMBER _____

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER ____

The Indictment in this case charges the defendant with one crime.

Under Count 1, the Indictment charges that on November 23, 2004, the defendant committed the crime of knowingly possessing with the intent to distribute a mixture or substance containing a detectable amount of cocaine base (commonly called "crack cocaine"), a Schedule II controlled substance.

The defendant has pleaded not guilty to the crime with which he is charged.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

INSTRUCTION NUMBER _____

The crime of knowingly possessing with the intent to distribute a mixture or substance containing a detectable amount of cocaine base (commonly called "crack cocaine"), a Schedule II controlled substance, as charged in Count 1 of the Indictment, has three essential elements, which are:

One, on November 23, 2004, the defendant possessed a mixture or substance containing a detectable amount of cocaine base;

Two, the defendant knew he was in possession of the cocaine base; and

Three, the defendant intended to distribute some or all of the cocaine base to another person.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of possessing cocaine base with the intent to distribute; otherwise you must find the defendant not guilty of possessing cocaine base with the intent to distribute.

If you find the defendant not guilty of possessing with the intent to distribute a mixture or substance containing a detectable amount of cocaine base, then you must go on to consider whether the defendant possessed a mixture or substance containing a detectable amount of cocaine base as explained in Instruction Number _____.

INSTRUCTION NUMBER _____

Lesser Included Offense of Count 1: Possession of Crack Cocaine

If your verdict under Instruction Number ___ is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Instruction Number ___, follow the directions on the Verdict Form and go on to consider whether the defendant is guilty of the crime of possessing cocaine base under this instruction.

The crime of knowingly possessing a mixture or substance containing a detectable amount of cocaine base (commonly called "crack cocaine"), a Schedule II controlled substance, a lesser included offense of the crime charged in Count 1 of the Indictment, has two essential elements, which are:

One, on November 23, 2004, the defendant possessed a mixture or substance containing a detectable amount of cocaine base; and

Two, the defendant knew he was in possession of the cocaine base.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of possessing cocaine base; otherwise you must find the defendant not guilty of possessing cocaine base.

INSTRUCTION NUMBER _____

You are instructed as a matter of law that cocaine base (commonly called "crack cocaine") is a Schedule II controlled substance. You must ascertain whether or not the substance in question in this case was cocaine base. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams, and one kilogram equals 1,000 grams.

INSTRUCTION NUMBER ____

The law recognizes several kinds of "possession." A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in "actual possession" of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in "constructive possession" of it.

If one person alone has actual or constructive possession of a thing, possession is "sole." If two or more persons share actual or constructive possession of a thing, possession is "joint."

Whenever the word "possession" has been used in these instructions it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

Possession of drugs cannot be found solely on the ground that the defendant was near or close to the drugs. Nor can it be found simply because the defendant was present at a scene where drugs were involved, or solely because the defendant associated with a person who does control the drugs or the property where they are found. However, these factors may be considered by you, in connection with all other evidence, in making your decision whether the defendant possessed the drugs.

INSTRUCTION NUMBER ____

A defendant may own or have control over the place where the drugs are found, such as an apartment or a vehicle. Where the defendant is the sole person having such ownership or control, this control is significant evidence of the defendant's control over the drugs themselves, and thus of his constructive possession of the drugs. You should note, however, that the defendant's sole ownership or control of a residence or vehicle does not necessarily mean that the defendant had control and constructive possession of the drugs found in it.

A defendant may also share ownership or control of the place where drugs are found. In this event, the drugs may be possessed by only one person, or by some of the people who control the place, or by all of them. However, standing alone, the fact that a particular defendant had joint ownership or control over the place where the drugs were found is not sufficient evidence to find that the defendant possessed the drugs found there. In order to find that a particular defendant possessed drugs because of his joint ownership or control over the place where they were found, you must find, beyond a reasonable doubt, that the defendant knew about the presence of the drugs and intended to exercise control over them.

INSTRUCTION NUMBER ____

The term "distribute" means to deliver a controlled substance to the possession of another person. The term "deliver" means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of distribution of a controlled substance and does not concern itself with any need for a "sale" to occur.

INSTRUCTION NUMBER_____

An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant's acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER ____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER ____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER ____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd.)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NUMBER ____

Attached to these instructions you will find two Verdict Forms. The Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on the answers to the Verdict Forms, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

_____ _____

DATE

LINDA R. READE
JUDGE, U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES ERIC MOORE, Defendant.	No. CR 04-0114 LRR **VERDICT FORM - COUNT 1**

We, the Jury, find the defendant, James Eric Moore, _____ of the crime
Not Guilty / Guilty
of possessing with the intent to distribute a mixture or substance containing a detectable amount of cocaine base (commonly called "crack cocaine"), a Schedule II controlled substance, on November 23, 2004, as charged in Count 1 of the Indictment.

_____
FOREPERSON

_____
DATE

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, and sign and date this verdict form. Do not consider the following verdict form.

(CONTINUED)

If you unanimously find the defendant not guilty of the above crime, have your foreperson write "not guilty" in the above blank space, and sign and date this verdict form. You must then consider whether the defendant is guilty of the lesser included offense of the crime charged in Count 1.

If you are unable to reach a unanimous decision on the above charge, leave the space blank and decide whether the defendant is guilty of the lesser included offense of the crime charged in Count 1 on the following verdict form.

(CONTINUED)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES ERIC MOORE, Defendant.	No. CR 04-0114 LRR **VERDICT FORM - COUNT 1**

_____

Lesser Included Offense of Count 1: Possession of Crack Cocaine

We, the Jury, find the defendant, James Eric Moore, _____ of the crime
Not Guilty / Guilty
of possessing a mixture or substance containing a detectable amount of cocaine base (commonly called "crack cocaine"), a Schedule II controlled substance, on November 23, 2004, a lesser included offense of the crime charged in Count 1 of the Indictment.

_____
FOREPERSON

_____
DATE